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**Testimony from Jay Kaplan, ACLU of Michigan**  
**September 11, 2013**  
**HB 4927 and 4928**

Good morning. As the staff attorney for the LGBT Project and on behalf of the ACLU of Michigan, I am here to testify against House Bills 4927 and 4928, both of which are designed to allow child placing agencies the right to assert a moral or religious objection as a reason to deny certain families a child placement. Although the legal and judicial standard in Michigan has long been what is in “the best interests of the child,” these bills attempt to ignore that logical standard in deference to what can only amount to discrimination on the basis of religion (for the most part, the religion of the child placing agency).

We see these bills every session and so far and thankfully so, they have not become laws in Michigan. We do not argue with the right of a faith based child placing agency to assert its biases for family structure based on the tenets of their religion when they are **NOT** receiving public money to perform their services. However, the agencies that are subject to HB 4927 and 4928 are receiving state monies and are therefore agents of the State. The State of Michigan should not discriminate based on religion. The First Amendment of the United States Constitution clearly prohibits the passage of any law establishing a particular religious belief.

The second compelling argument against this type of legislation is that Michigan law and courts require that the best interests of the child be considered in making any decision regarding child placement- including foster care and adoption. The statutory provision best interests of the child considers 12 factors under that rubric and the concept of best interests of the child has long been the polar star for judicial guidance in cases involving children. *Corrie v Corrie*, 42 Mich 509 (880); *In re Ernst*, 273 Mich 337 (1964).

However, the recent version of these bills seek to eliminate the consideration of “best interests of the child” when an agency asserts a religious or moral objection under HB 4927 and 4928. To quote language directly from both bills: (8) *Refusal by a child placing agency under section 23b or 23d of this chapter to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the child placing agency’s written religious or moral*



*convictions or policies does not constitute a determination that the proposed adoption is not in the best interests of the adoptee.* While this language permits the child placement agency to ignore what is in the best interests of the child, we don't believe that this changes the duty of the State of Michigan to consider the best interests of a child, first and foremost.

Currently faith based child placing agencies (including those who are receiving state dollars) denying placements for a variety of reasons, including sexual orientation, because there is no real oversight by the State or public awareness to promote an outcry. We see House Bills 4927 and 4928 as an attempt to write religious discrimination into Michigan law, whereas supporters will argue that they see this an opportunity to promote what they deem to be religious freedom. In the end, we believe that any organization that operates and takes state funding (generated by Michigan taxpayers) should not be able to deny child placements based on sexual orientation, religion, marital status or any protected categories under Michigan Civil Rights laws.

In sum, the proposed legislation attempts to carve out an exception to both civil rights laws and the best interests of the child and are problematic three-fold:

1. They allow child placement agencies to discriminate in making child placements, while at the same time taking state dollars to do so.
2. They give a license to child placement agencies to discriminate against prospective families in violation of Michigan civil rights laws.
3. They allow child placement agencies to make decisions regarding placement of children that do not constitute the best interests of the child, which goes against Michigan law and judicial legal precedent.

The State of Michigan with regards to child placement has a duty to focus what is best for the child. It should NOT be approving and fostering the ability of placement agencies to discriminate, particularly when state funding is involved. To repeat if these child placement agencies want to forgo state funding they are free to have moral and religious convictions to be the paramount consideration in placing children. However, once they take state dollars, they are state agents, and the State of Michigan should not be in the business of discrimination. Nor should the State be complicit in placing a child's welfare on a lower rung. We strongly oppose these bills and will challenge them should they pass and regrettably become law.

Thank you.